

**DEC 11 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON**

**U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

PURE POWER! INC., a California  
Corporation,

Plaintiff - Appellant,

v.

UNITED STATES POSTAL SERVICE, a  
Federal Agency; WILLIAM J.  
HENDERSON, in his capacity as  
Postmaster General, United States Postal  
Service,

Defendants - Appellees,

and

GLACIER METAL COMPANY  
LIMITED, a business entity of unknown  
structure or origin; TF HUDGINS, a Texas  
Corporation,

Defendants.

No. 02-56014

D.C. No. CV-00-00709-GLT

MEMORANDUM\*

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\*This disposition is not appropriate for publication and may not be cited to  
or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court  
for the Central District of California  
Gary L. Taylor, District Judge, Presiding

Submitted November 3, 2003\*\*  
Pasadena, California

Before: BRIGHT\*\*\*, O'SCANNLAIN, and McKEOWN, Circuit Judges.

Pure Power! Inc., an oil-filter company, alleges that the United States Postal Service (USPS) violated its own procurement regulations by selecting Pure Power!'s competitor to supply oil filters for a fleet of new trucks purchased by the USPS. The district court dismissed the action for want of subject matter jurisdiction and addressed no other legal or factual issues in the dispute. Pure Power! appeals, and we reverse and remand.

Since the district court's dismissal, this Court decided Flamingo Indus. v. United States Postal Serv., 302 F.3d 985 (9th Cir. 2002), cert. granted, 123 S. Ct. 2215 (2003). In Flamingo, we followed the Federal Circuit's holding in Emery Worldwide Airlines, Inc. v. United States, 264 F.3d 1071 (2001), and held unambiguously that 28 U.S.C. § 1491(b)(1) grants the district courts jurisdiction

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\*\*The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a)(2).

\*\*\*The Honorable Myron H. Bright, United States Circuit Judge for the Eighth Circuit, sitting by designation.

over procurement-related claims against the USPS filed before January 1, 2001. Flamingo, 302 F.3d at 994. In this case, Pure Power! filed its complaint on July 21, 2000. Normally, this Court may only overturn a previous panel's decision when acting en banc. Miller v. Gammie, 335 F.3d 889, 899 (9th Cir. 2003) (en banc). Because Pure Power! filed its action against the USPS alleging procurement violations before the statutory sunset provision took effect, Flamingo directly controls. Therefore, the district court's decision no longer comports with this Court's precedent.

We decline the parties' invitation to consider the many other factual and legal issues raised in the briefs. On the sole issue of subject matter jurisdiction, we REVERSE and REMAND to the district court.